

Court rebuffs Nixon on tapes

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WASHINGTON (AP) — The Supreme Court on Tuesday rebuffed Richard Nixon's attempt to gain control of the 880 tape recordings and 42 million pages of documents left behind when he was forced from the presidency.

The justices, voting 7 to 2, ruled that Congress acted constitutionally in 1974 when it passed a law allowing the government to decide which materials may be controlled by Nixon and which may be made public.

The decision is the first step toward allowing the public access to most of the materials, a process that could take years and is sure to spark more lawsuits by the former president who resigned Aug. 9, 1974, in the wake of the Watergate scandals.

Included in the 5,000 hours of tape recordings are the 30 reels of tape played during the Watergate cover-up trial of Nixon's closest aides.

Still pending before the nation's highest court, in a case to be argued next fall or winter, is a lawsuit aimed at making copies of those 30 tapes available for reproduction into cassettes and records.

There was no immediate comment from Nixon. An aide at Nixon's home in San Clemente, Calif., and a lawyer here said they would not comment before reading the court's full decision.

The court rejected five specific claims by Nixon's attorneys that the 1974 law, called the Presidential Materials and Recordings Preservation Act, was unconstitutional.

The court said the act did not violate the separation of powers between the legislative and executive branches of government, did not violate Nixon's right to privacy or his presidential privilege of confidentiality, and did not significantly interfere with his rights of association.

The justices also ruled that the law was not an illegal "bill of attainder" — a law aimed at punishing an individual whose guilt has not been established in the courts.

The law, and the court's decision, involved only the tapes and papers from Nixon's 5½ years in office. But one of the court's dissenters, Justice William H. Rehnquist, said the Nixon case could affect all future presidents.

His contention was directly rebutted by Justice John Paul Stevens.

Justice William J. Brennan Jr. wrote the majority opinion, joined by Stevens and Justices Potter Stewart and Thurgood Marshall.

Justices Harry A. Blackmun, Lewis F. Powell Jr. and Bryon R. White joined in most of Brennan's findings.

Rehnquist and Chief Justice Warren E. Burger dissented, saying Nixon, like every president before him, should be allowed to decide which portions of the presidential materials he generated to give to the government for public consumption.

During Nixon's three-year battle to control the materials, the tapes and documents have been stored at the White House and the National Records Center in Suitland, Md.

Nixon and other officials of the executive branch have been allowed access to them, but the General Services Administration was made custodian of all materials by the 1974 act.

The law requires the GSA to recommend to Congress regulations allowing public access to the documents. Under those regulations, not yet approved, government archivists are to sift through the huge volumes of materials and decide which are private — to be returned to Nixon — and which are of "general historic value" and should be made public.

Congress passed the law shortly after

Nixon's departure because it considered him an "unreliable custodian" of the tapes and papers, and considered it likely that Nixon might destroy some material that could benefit the investigations of the Watergate special prosecutor.

Former Special Prosecutor Leon Jaworski, contacted at his law office in Houston, expressed satisfaction with the ruling. He said he believes the materials are government property, but considers it appropriate that Nixon should have access to them in writing his memoirs.

The law, signed by then-President Gerald R. Ford on Dec. 19, 1974, nullified an agreement Nixon had reached with the General Services administrator giving Nixon control of the tapes and papers and arranging for their shipment

(Continued On Page A-5)

Court

(Continued From Page One)

to San Clemente.

"We, of course, are not blind to (Nixon's) plea that we recognize the social and political realities of 1974. It was a period of political turbulence unprecedented in our history," Brennan's opinion said.

"But this court is not free to invalidate acts of Congress based upon inferences that we may be asked to draw from our personalized reading of the contemporary scene or recent history," it said.

Rehnquist said the decision may set a dangerous precedent.

"If the issue here were limited to the right of Congress to dispose of his particular presidential papers, this case would not be of major constitutional significance," Rehnquist said.

"Unfortunately, however, today's decision countenances the power of any future Congress to seize the official papers of an out-going president as he leaves the inaugural stand. In so doing, it poses a real threat to the ability of future presidents to receive candid advice and to give candid instructions," he said.

Stevens declared that Nixon's peculiar departure from office made him "a legitimate class of one."

"Appellant resigned his office under unique circumstances and accepted a pardon for offenses committed while in office," Stevens said. "By so doing, he placed himself in a different class from all other presidents."

The court's decision indicated that whatever the final regulations for public release of the materials, Nixon will be able to challenge only release of the tapes and those papers he personally handled.

"Appellant concedes that he saw no more than 200,000 (of the papers) and we do not understand him to suggest that his privacy claim extends to items he never saw," the court said.

Brennan's opinion added that Nixon has no privacy claim to tape recordings and documents he already may have released to the public.